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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

CERTAIN UNDERWRITERS AT LLOYD’S,
LONDON,

Plaintiffs,

v.

TERAMAY PROPERTIES, LLC, an Oregon
limited liability company; BENJAMIN MAY, an
individual; CASA MODERNA LLC, an Oregon
limited liability company; and ASSOCIATION
OF UNIT OWNERS OF THE IVY STREET
CONDOMINIUMS, an Oregon non-profit
corporation,

Defendants.

Case No. _____

**COMPLAINT FOR DECLARATORY
RELIEF**

Declaratory Judgment Act
(28 U.S.C. §§ 2201-2202)

Plaintiffs, Certain Underwriters of Lloyd’s, London (“Underwriters”) for their claim for relief against Defendants, hereby allege as follows:

NATURE OF THE ACTION

1. Underwriters seek a declaration pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, of their obligations to Teramay Properties, LLC (“Teramay”), Benjamin

May (“May”), and Casa Moderna LLC (“Casa Moderna”) in connection with those parties’ claims for insurance coverage under the policy of insurance Underwriters issued to Teramay.

2. Teramay, May, and Casa Moderna are defendants in a lawsuit brought by the Association of Unit Owners of the Ivy Street Condominiums (“Ivy Street COA”) pertaining to alleged construction defects in properties located at 215 and 223 NE Ivy Street, Portland, Oregon (the “Subject Properties”).

PARTIES

3. Underwriters are members of insurance syndicates organized under the laws of Great Britain. No Underwriter and no member of Underwriters’ syndicates is an Oregon resident.

4. Teramay is an Oregon limited liability corporation and its principal place of business is in Oregon.

5. On information and belief, May is a resident of Oregon.

6. Casa Moderna is an Oregon limited liability corporation and its principal place of business is in Oregon.

7. The Ivy Street COA is a domestic non-profit corporation registered in Oregon. Its principal place of business is in Oregon.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a), because there is complete diversity of citizenship between the parties. None of the Underwriters and none of the members of Underwriters’ syndicates are residents of Oregon, and all Defendants are residents of Oregon. The amount in controversy exceeds, exclusive of interest and costs, the sum of \$75,000. Venue lies with this court under 28 U.S.C. § 1391(b), because the events which gave rise to this dispute occurred in the District of Oregon.

STATEMENT OF FACTS

9. On information and belief, Teramay was the owner of two properties located at 215 and 223 NE Ivy Street, Portland, Oregon (the “Subject Properties”) from 2006 to 2014. The Subject Properties contained individual condominium units.

10. Underwriters are members of insurance syndicates subscribing to a commercial general liability policy, number VPP001193 (the “Policy”), that was issued to Teramay. A copy of relevant portions of the Policy, including the certificate of insurance, declarations page, coverage form, and exclusions, is attached hereto as Exhibit 1.

11. The Policy was in effect from March 24, 2014 to December 24, 2014, and provided coverage in the amount of \$1,000,000 for each occurrence and \$2,000,000 aggregate. The premises insured are listed as “215 Ivy Street, Portland, OR 97212.” The named insured is “Teramay Properties, LLC.”

12. Teramay conveyed the Subject Properties to Casa Moderna on April 28, 2014. Casa Moderna is not an insured under the Policy.

13. On information and belief, after acquiring the Subject Properties from Teramay, Casa Moderna hired Dream Makers Construction, LLC (“Dream Makers”) to perform renovations of the condominium units within the Subject Properties.

14. On information and belief, after those renovations were completed, Casa Moderna sold the condominium units in the Subject Properties to the Ivy Street COA’s individual members between September 2014 and February 2015.

15. On May 20, 2016, the Ivy Street COA filed a lawsuit against Casa Moderna and Dream Makers in the Multnomah County Circuit Court, Case No. 16CV16742 (the “Underlying Action”) alleging “extensive construction defects and related property damages at the

condominiums,” including a number of water intrusion issues with the siding and roof. The Underlying Action alleges claims for “Misrepresentation/Failure to Disclose,” “Breach of Contract/Breach of Implied Warranties and Obligations,” “Breach of Fiduciary Duties,” “Violation of the Oregon Condominium Act,” “Violations of the Unlawful Trade Practices Act,” “Negligence,” and “Negligence *Per Se*.” The Ivy Street COA seeks \$1,000,000 in damages.

16. On January 24, 2017, the Ivy Street COA filed an Amended Complaint in the Underlying Action adding claims against Teramay and May, individually, for “Breach of Fiduciary Duty,” arising from each’s alleged involvement with the Ivy Street COA’s Board of Directors. A copy of the Amended Complaint is attached hereto as Exhibit 2.

POLICY PROVISIONS

17. The Policy contains the following relevant coverage provisions and definitions:

Insuring Agreement:

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies.

...

b. This insurance applies to “bodily injury” and “property damage” only if:

(1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;

...

“Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

...

“Property damage” means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it...

18. The Policy contains the following relevant Exclusions:

2. EXCLUSIONS

This insurance does not apply to:

...

j. Damage to Property

“Property damage” to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another’s property;
- (2) Premises you sell, give away or abandon, if the “property damage” arises out of any part of those premises;

...

- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the “property damage” arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because “your work” was incorrectly performed on it.

Paragraphs (1), (3), and (4) of this exclusion do not apply to “property damage” (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days...

Paragraph (2) of this exclusion does not apply if the premises are “your work” and were never occupied, rented or held for rental by you.

19. The Policy contains the following relevant provisions regarding “Who is an Insured”:

1. If you are designated in the Declarations as:

...

- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business.

Your managers are insureds, but only with respect to their duties as managers.

...

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

...

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment)

20. Underwriters reallege and incorporate by this reference the preceding paragraphs.

21. There has arisen and now exists an actual controversy between Underwriters, Teramay, May, Casa Moderna, and the Ivy Street COA, concerning Underwriters', Teramay's, May's, and Casa Moderna's respective rights and obligations under the Policy regarding coverage and defense for the claims alleged in the Underlying Action. At this time, Underwriters are defending Teramay in the Underlying Action under a full reservation of rights.

22. Pursuant to 28 U.S.C. §§ 2201-2202, Underwriters seek a judicial determination as to their rights and obligations under the Policy, and that there is no duty to defend or indemnify under the Policy for any claims alleged.

23. Underwriters contend that there is no coverage under the Policy for the claim alleged against Teramay in the Underlying Action for the following reasons:

- a. The Underlying Action does not allege an "occurrence," as that term is defined by the Policy;

- b. The Underlying Action does not allege “property damage,” as that term is defined by the Policy, and which was caused by Teramay; and
- c. To the extent that the Underlying Action could be construed as alleging “property damage” caused by an “occurrence,” as those terms are defined in the Policy, and the Policy’s Insuring Agreement otherwise might apply, the Policy’s “Damage to Property” Exclusion would apply to bar coverage.

24. Underwriters contend that there is no coverage under the Policy for the claim alleged against May or Casa Moderna because those entities are not named or additional insureds under the Policy.

RESERVATION OF ADDITIONAL CLAIMS

25. In the event this Court determines that Underwriters have any duty to defend or indemnify Teramay or any other individual or entity, with respect to the allegations of the Underlying Action, Underwriters reserve the right to challenge any “evidence” or findings in the Underlying Action to the extent such evidence or finding was presented, created or agreed in order to deflect or redirect liability from May, individually, or from Casa Moderna, to Teramay in order to impose coverage and liability on Underwriters. Underwriters also reserve the right to bring and assert any and all subrogation claims against any and all persons and entities against whom Teramay may have a right to indemnity, contribution, or recovery, to the extent Underwriters incur any expense or obligation on behalf of Teramay.

PRAYER FOR RELIEF

WHEREFORE, Underwriters pray for the entry of a judgment:

- (1) Declaring that they have no duty under the Policies to defend Teramay in the Underlying Action;

- (2) Declaring that they have no duty under the Policies to defend May or Casa Moderna in the Underlying Action;
- (3) Declaring that they have no obligation under the Policies to pay any damages for any of the claims alleged in that complaint; and
- (4) Awarding Underwriters their costs and disbursements incurred in this action.

DATED: April 5, 2017.

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